

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-555-C - ORDER NO. 91-1152 ✓
DECEMBER 27, 1991

IN RE: Request of Southern Bell for Approval)
 of Revisions to its General Subscriber)
 Service Tariff to Introduce MemoryCall)
 as a New Service Offering.)

ORDER
DENYING
REQUEST

On August 26, 1991, Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a request for approval of revisions to its General Subscriber Service Tariff. The purpose of this filing is to introduce MemoryCall as a new service offering for its general subscriber body.

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the affected area. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file their appropriate pleadings. Petitions to Intervene were filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate) and by the South Carolina Association of Telephone Answering Services (SCATAS). A public hearing was held in the offices of the Commission on December 11, 1991 at 2:30 p.m. The

Honorable Henry G. Yonce presided. The Company was represented by Fred A. Walters, Esquire; the Consumer Advocate for the State of South Carolina was represented by Elliott F. Elam, Jr., Esquire; SCATAS was represented by Arthur G. Fusco, Esquire; and the Commission Staff was represented by F. David Butler, Staff Counsel. The Company presented the testimony of two witnesses, C.L. Addis and Sharon A. Etheridge, while the SCATAS presented the statements of three witnesses, Nan B. Bates, James C. Bagwell, and Dennis H. Dallas. No witnesses were presented by any other party.

At the beginning of the hearing, Southern Bell and the Consumer Advocate presented a Joint Stipulation of facts which was entered into evidence as Hearing Exhibit #1. The Stipulation noted, in part, that in determining the proper cost for MemoryCall service, Southern Bell has used the tariff rate for Simplified Message Desk Interface (SMDI), a service which is used by Southern Bell in providing MemoryCall service to activate optional Message Waiting Indication. The Consumer Advocate had challenged the provisioning of SMDI service to Southern Bell's customers under Open Network Architecture (ONA) in Docket No. 90-815-C, due to its perceived ability to deliver a calling party number (intra-central office only) to the subscriber of SMDI. In addition to a tariff description of SMDI, the Stipulation stated that as a part of MemoryCall service, the only "customer" of SMDI referred to in the tariff language is Southern Bell itself. SMDI is utilized by Southern Bell alone and no customer of MemoryCall service, business or residential, will receive any form of electronically

forwarded calling party number as a result of subscribing to MemoryCall service.

Company witness C.L. Addis presented a description of the MemoryCall service proposed by Southern Bell. Addis stated that MemoryCall service is Southern Bell's integrated voice messaging service. MemoryCall would provide several different options for voice messaging, including telephone answering in which unanswered calls are forwarded to a voice mailbox, voice mail in which recorded messages are sent, received, or forwarded among a group of subscribers, and message notification in which subscribers are advised of waiting messages via stutter dialtone paging or telephone outdial. Addis went on to relate that MemoryCall is aimed at both residential and business customers. Addis noted that MemoryCall, i.e. voice messaging, requires three components, two basic network components which have been traditionally regulated by the Commission, and one component that is not regulated in most jurisdictions and is offered by numerous other providers. The two basic network components can be divided into those services used by voice messaging service providers and those complementary features required by end-users who subscribe to voice messaging. The other component is typically a computer which provides the ability to store and forward messages for many different voice messaging subscribers. Addis went on to state that competition for voice messaging is intense across all market segments.

Southern Bell also presented the testimony of Sharon A.

Etheridge, who presented testimony on the methodology, appropriateness, and results of the relevant costs for pricing decisions associated with the provisioning of MemoryCall service. Etheridge presented the cost study conducted by the Company.

SCATAS presented the statements of three witnesses. Nan B. Bates, who had been in the answering service business for twenty-one years, noted that the Southern Bell business office has access to all customer records, and would be able to try to sell MemoryCall to individuals and businesses as they call in for new service, or any other reason. She stated that the privately owned individual telephone answering service would never have a chance to sell service to these potential customers. Bates felt that Southern Bell has the first chance in approaching these customers. Further, Bates noted that Southern Bell would be able to send bill stuffers with their telephone bills, thus saving mailing costs and advertising costs. She believed that Southern Bell would be soliciting the answering services' present customers, not as a competitor, but as a telephone company which, in her opinion gives Southern Bell an advantage. Bates opined that MemoryCall would seriously jeopardize her current client base, if Southern Bell was allowed to offer MemoryCall as requested. Bates stated that she paid approximately \$33,000 yearly in telephone bills to Southern Bell.

Southern Bell moved to strike certain portions of Bates' testimony, on the grounds that they were pure speculation, and not factually based opinions. These portions are as follows: Page 1,

lines 17 through 27, page 2, lines 1 through 8, and page 2, lines 14 through 20. The Commission denies the motion, and holds that Bates was offering her opinion, based on many years of experience in dealing with Southern Bell as a part of her telephone answering service business. Further, under Regulation 103-869, a witness may read into the record as his direct testimony statements of facts or expressions of his opinion prepared for him. In addition, it is our opinion that Bates is an expert in the telephone answering service field. To be competent as an expert, a witness, by reason of study or experience or both must possess such knowledge or skill in a business, profession, or science that he is better qualified than a jury (or fact finder) to form an opinion on a particular subject to testimony. Campbell v. Paschal, 290 S.C. 1, 347 S.E.2d 892 (Ct. App. 1986). In our opinion, Bates is qualified through her twenty-one years of experience in the answering business to qualify as an expert in this field. Once qualified, the adequacy of an expert's knowledge goes to the weight of his testimony, not to its admissibility. Bonaparte v. Floyd, 291 SC 427, 354 S.E.2d 40 (Ct. App. 1987). Therefore, Southern Bell's motion to strike Bates' testimony must be denied.

SCATAS further presented the statement of James C. Bagwell. Bagwell believed that there were numerous reasons why Southern Bell's request to provide MemoryCall should be denied. He believed that the cross subsidization would occur in marketing, operation, maintenance, collection, and other aspects of the

day-to-day operation of the service. Also, Bagwell noted that Southern Bell had access to every customer record held by his service. Bagwell also stated that he believed that numerous small businesses operating in South Carolina for many years would be forced to close their doors because of unfair competition from Southern Bell.

Southern Bell made a similar motion to strike various portions of Bagwell's testimony on the same grounds as it employed to attempt to strike Bates' testimony. We have examined Bagwell's testimony, and hereby deny Southern Bell's Motion on the same grounds as stated under the motion to strike Bates' testimony. Again, we believe Bagwell is an expert in the telephone answering service field, since he has eight years experience.

Finally, SCATAS presented the testimony of Dennis H. Dallas, the President of the South Carolina Association of Telephone Answering Services. Dallas noted that even though he had made a major investment in equipment for both live answering and voice mail since April, 1990, his company, Accurate Telephone Secretaries, Inc., had not been successful in marketing any services in Rock Hill, since Rock Hill Telephone Company started their voice mail service in November, 1990. Dallas noted a significant revenue drop from the Rock Hill market area both from live answering and voice mail service, which forced him to expand his business more heavily in North Carolina. Dallas believed that a similar phenomenon would occur if Southern Bell was allowed to market MemoryCall.

Southern Bell moved to strike those portions of Dallas' testimony which mentioned or made reference to Rock Hill Telephone Company as being irrelevant to the present case. We deny Southern Bell's motion to strike those portions, in that we believe that the the presentation of Dallas' experience with a local exchange company engaged in a similar business to MemoryCall is directly relevant in assessing potential problems with competition between the telephone answering services and the local exchange companies. We therefore deny Southern Bell's Motion to Strike.

After thorough consideration of the Application, the evidence and the applicable law, the Commission holds that it must deny the request of Southern Bell for approval of its MemoryCall service. This Commission has examined the evidence very thoroughly, and based on the greater weight of the evidence, we believe that the telephone answering services will be severely affected by the presentation of MemoryCall in Southern Bell's market, and that Southern Bell will have an advantage over these small businesses in the marketing of this product. Because of these matters, we make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. SMDI is utilized by Southern Bell alone in the provision of MemoryCall service, and no customer of MemoryCall service, business or residential, will receive any form of electronically forwarded party numbers as as result of subscribing to MemoryCall service.

2. We adopt the additional language contained in the

stipulation of facts between Southern Bell, and the Consumer Advocate as a finding of fact in this case.

3. The witnesses presented by SCATAS are experts in the limited area of the telephone answering service business and their dealings with Southern Bell in that context, and we believe that their testimony was not only admissible, but supports the denial of the request of Southern Bell for approval of the MemoryCall service, due to Southern Bell's easy accessibility to telephone answering service customers, and its unfair advantage in competing for voice mail services.

4. MemoryCall presents a substantial threat to the continued viability of telephone answering services in the State of South Carolina, in that Southern Bell will have a competitive advantage over the telephone answering services in the marketing of voice mail services.

5. Southern Bell has initial contact with many customers and may enclose bill stuffers, along with its regular bills. Southern Bell has other contacts with potential customers which the telephone answering services do not.

6. The competitive advantage, as experienced in other areas of the state, reduces the viability and market potential of telephone answering services to the detriment of the existing telephone answering service providers.

CONCLUSIONS OF LAW

1. Southern Bell's request for approval of revisions to its General Subscriber Service Tariff, i.e. the MemoryCall service, must be denied, since Southern Bell has an unfair advantage in competing with the telephone answering services of South Carolina for voice mail services.

2. That the unfair competitive advantage would severely and detrimentally impact the existing providers of telephone answering services.

3. That this decision is limited to the intrastate portion of the service. The Commission takes no position with regard to the interstate portion of the service.

IT IS THEREFORE ORDERED THAT:

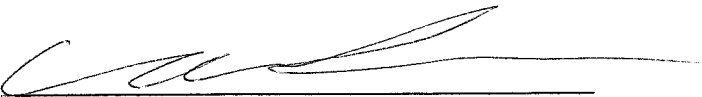
1. Southern Bell's request for approval of revisions to its General Subscriber Service Tariff i.e. MemoryCall, is hereby denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)